

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**SCOTT T. BALLOCK**

Case No.: 1:17-CV-52

Plaintiff,

v.

JURY TRIAL REQUESTED

**ELLEN RUTH COSTLOW,  
STATE TROOPER MICHAEL KIEF,  
STATE TROOPER RONNIE M. GASKINS,  
and  
STATE TROOPER CHRIS BERRY,**

Defendants.

**PLAINTIFF'S OPPOSITION TO TROOPER DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Monongalia County Sheriff's Office, Call Summary Report, cited at page 10, footnote 10.

Exhibit No. 5

116 Walnut Street

Morgantown, WV 26505

304-291-7260

## Call Summary Report

Date Printed  
8/28/2013 10:33Call Details

Call/Dispatch Numbers: C13-0020145	201386954	Responding Officer: SNIDER, BRANDEN
Date/Time Reported: 8/12/2013 02:42		Time Arrived: 8/12/2013 03:08 Time Cleared: 8/12/2013 04:59
Time Dispatched: 8/12/2013 02:42		Call Type: DOMESTIC DISPUTE
How was call received?: 911		
Municipality: Monongalia County		
Date / Time Approved: 8/26/2013 02:11		Approving Officer: JONES, MANSELL FLOYD

Dispatch Location Information

Dispatch Location: 51 SUMMIT OVERLOOK DRIVE, MORGANTOWN WV 26508 (51 SUMMIT OVERLOOK DR MORGANTOWN)

Latitude: Longitude: Altitude:

Complainant / Contact Information

Person/Org: ICE, KENNY	Address: R BOY FAIRMONT WV 26554
Business Ph: --	Mobile Ph: --
Home Ph: --	Other Ph: --
Role: INVOLVED	DOB: --, 1977

Person/Org: JONES, MANSELL FLOYD III	Address:
Business Ph: --	Mobile Ph: --
Home Ph: --	Other Ph: --
Role: ASSISTING	DOB:

Person/Org: BALLOCK, ELLEN RUTH	Address: SUMMIT OVERLOOK DRIVE, MORGANTOWN WV 26508
Business Ph: --	Mobile Ph: --
Home Ph: 734-660-4240	Other Ph: --
Role: INVOLVED	DOB: --, 1967

Call Notes

Deputy Snider's Narrative:

On this date I was dispatched to 51 Summit Overlook Drive, in Monongalia County for an assist EMS call. The caller, Kenny Ice, stated he spoke with his girlfriend, Ellen Ballock, and she was having a panic attack at this address. Mr. Ice stated he was going back to the residence. Shortly later Mr. Ice called back in to the 911 center and stated we could cancel and that he was going to take her to the hospital. I made contact with Mr. Ice and he stated everything was fine and that he was at the residence. He stated he was going to take Mrs. Ballock to the hospital. I could hear Mrs. Ballock crying in the background so I asked to talk to her. I spoke with Mrs. Ballock and she sounded upset. I heard her asking Mr. Ice to find her cell phone. Given the nature of the call I responded to the residence to find out what was going on.

Once on scene at the residence I knocked on the door and made contact with Mr. Ice. He went outside where he spoke with Lt. Jones. I was then invited inside where I spoke with Mrs. Ballock. She was sitting on the kitchen floor crying. I asked Mrs. Ballock what was going on and she stated her and Mr. Ice had been in an argument. Mrs. Ballock was hesitant to give me much information at first stating she was not supposed to be around Mr. Ice. Mrs. Ballock went on to tell me that she was going through a complicated divorce and her attorney advised her she if she was around Mr. Ice they would drop her as a client. Mrs. Ballock asked me to keep both of their names out of any reports. EMS arrived on scene and she stated she did not need them. She then stated that she had a small bump on her lip. Speaking with Mrs. Ballock further she stated that she had been in contact with Trooper Berry in reference to a stolen computer. She rambled on about the details of the computer and Mr. Ice's involvement with the computer. I advised Mrs. Ballock that because Trooper Berry was already investigating the incident she would have to speak with him. After speaking with her about several other issues she was having I again asked her what happened on

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this date. Mrs. Ballock stated she was texting Trooper Berry about meeting him earlier in the day to speak with him about the computer. Mrs. Ballock stated that the door bell rang and she answered the door. She stated it was Mr. Ice and he came into the residence. Mrs. Ballock stated at some point Mr. Ice looked at her text message and saw she was texting Trooper Berry and he got angry and accused her of sleeping with him. She stated Mr. Ice was downstairs sitting on a chair and she was laying on a mattress which was on the floor. She stated Mr. Ice got on top of her and put his hands around her mouth yelling at her. Mrs. Ballock stated at some point Mr. Ice threw the phone against the wall causing a dent in the dry wall. Mrs. Ballock stated Mr. Ice left the residence and she faked a panic attack to get him to come back to the residence causing us to be called. She again rambled on about the laptop. Mrs. Ballock again stated she did not want to do anything and asked theirs names be omitted from any report.

I spoke with Lt. Jones about the incident and he told me what Mr. Ice had said to him outside. Lt. Jones and I spoke with Mrs. Ballock further and she explained the situation again. Lt. Jones and I spoke and with the information given and the mark on Mrs. Ballocks lip decided a domestic battery had occurred and Mr. Ice would be arrested.

Lt. Jones and I went out to speak with Mr. Ice again. I asked him several questions about what happened on this date and he did not want to provide us with much information. I asked him about Mrs. Ballocks lip and he stated that she was slapping him in the chest and while trying to get her away from him he may have put his hands on her face. I asked him about the dent in the dry wall and he stated the room had flood damage and had been there for some time. Mr. Ice finally stated to Lt. Jones and I that Mrs. Ballock had came at him with a small bladed knife downstairs and that she had cut him in his forearm. I looked at his arm and observed one single cut running vertical with his arm. He stated that if we looked downstairs the knife would probably still be laying on the floor in between the mattress and chair. I walked downstairs and located the knife. One the blade of the knife I observed a small amount of blood. It was collected for evidence. Mr. Ice stated repeatedly that he did not want to pursue charges and he did not want her to get in trouble.

I spoke with Mrs. Ballock about the cut on Mr. Ice's arm and the knife found downstairs. She stated that Mr. Ice must have cut himself to get her in trouble.

At this time I advised both parties of their options and told them I was going to review the case with the prosecuting attorneys office. Mr. Ice left the residence shortly after. Mrs. Ballock followed deputies to the Monongalia County Sheriffs Office to obtain a protective order. The order was granted and faxed to Marion County for service. A few days later I heard that Mr. Ice had also obtained a protective order on Mrs. Ballock and our office had served the order.

On 08/20/2013 I spoke with APA Cindy Scott and explained the case to her. Mrs. Scott felt there was insufficient evidence to identify the primary aggressor and charge anyone at this time. Scott said to close the case for now, pending further evidence.

**Lt. Jones' Narrative:**

Deputy Snider and I responded to a reported domestic at 51 Summit Overlook Drive. There was also a call of a female that had passed out and needed an ambulance. When Snider and I arrived there was a male in the driveway. The male, identified as Kenny Ice said he was he female's boyfriend. The female, Ellen Ballock was inside and had passed out, possibly due to a panic attack. I stayed with the male while Snider went inside to speak to Ballock.

According to Ice he and Ballock had been downstairs watching television and they argued. Ice said he had left, but returned when he found out Ballock needed help. I asked if there had been any physical contact between he and Ballock. Ice hesitated before answering and I said I would take that as a yes. Again, I asked what happened. He said he had been sitting in a chair near a mattress that was on the floor. Ballock had been on the floor and had attacked him. He stressed that he did not want to get her in trouble because she had enough going on with a custody battle with an estranged husband. I asked if physical contact had bee made and again he hesitated before answering. Ice said yes, Ballock had hit him in the chest. He demonstrated by slapping himself in the chest with his

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hands. Ice said again that if we needed to arrest someone then arrest him, because he was not going to get her in trouble.

While I was speaking to Ice, EMS arrived and went inside the house. I continued speaking to Ice about his job, his relationship with Ballock and other things while Snider was inside. Ice appeared very calm and relaxed and stood with his arms folded across his chest much of the time.

I eventually went inside to speak to Snider. Ms. Ballock was sitting on a small blanket spread out on the kitchen floor. I listened to Ballock answering Snider's questions. While she responded to the questions, the answers were often long and somewhat rambling, diverting into other issues in her life, including the situation with her estranged husband. She also pleaded with us not to her name or Ice's in the report. She said her attorneys told her they would drop her as client if she was around Ice, as they felt he was not 'good for her'. She said they or her husband would know we were there.

She said WVSP Tpr. Berry had been at her home that day or the day before reference a missing laptop that she said Ice had stolen. Ballock said Ice accused her of sleeping with Berry. She denied that accusation. She said there were things on that laptop that she needed for her custody battle with her husband. We explained that she would have to follow-up with Berry as to the reported stolen laptop. Ballock said she had passed out and Ice had broken in the back door to check on her.

Ballock had a small bruise, knot on the inside of her upper lip. She said Ice did that to her when he put his hand over her mouth. When asked to elaborate and she said they had been downstairs. She was laying on the mattress on the floor and Ice was sitting in a chair next to the mattress. At some point a verbal argument started and during that argument Ice jumped on top of her and wrestled with her and put his hand over her mouth. She said he had thrown her cell phone into a nearby wall. Ballock took us downstairs and showed Snider and I the room and mattress, chair, tv etc. There was a small dent in the wallboard in the next room. It did appear that it could have been made by a thrown cell phone. Ballock's cell phone did not appear to be damaged. Further, she used it to call someone while we were still on scene.

Snider went upstairs at one point and Ballock told me that she believed Ice had also taken a video tape of her and Ice "in the throws of passion". Ballock and I returned upstairs to the kitchen. I photographed the broken back door, the dent in the wall and Ballock's lip. EMS cleared the scene as they were no longer needed by Ballock.

After a short discussion Snider and I decided that Ice would be arrested for domestic battery. We went outside and spoke to Ice. It was at this point that he asked about her cutting him with a knife. He then showed us a long, very shallow cut on the top of his left forearm. I had not seen that cut before because Ice had kept that covered with his folded arms. I asked him why he had not told me about the knife and cut earlier. He again said he did not want to get Ballock in trouble. Snider asked Ice about the knife. Ice described the knife and where it was; between the mattress and chair downstairs. He said he wrestled with Ballock to get the knife from her and that is probably when she got the mark on her lip. Ice aid he did not throw her cell phone. Any mark on the wall had to be from something else. Snider went inside and retrieved the knife, which appeared to have a small amount of blood on the tip.

Snider then went inside and asked Ballock about the knife and Ice's cut arm. She said he must have taken the knife from the kitchen and cut himself. Snider asked her when that could have happened and she said she wasn't sure, but Ice had to do it after they fought. Snider secured the knife as evidence. Snider and I discussed the evidence. We had discussed the incident, evidence, etc and decided we could not clearly determine who was the primary aggressor in this incident. Rather than arrest both parties we decided to review the case with a prosecuting attorney and get their advice as to who, if anyone would be charged.

Snider and I explained the situation to both parties and explained how to obtain protective orders (FPO) if they wished. Both parties appeared satisfied with our decision. While speaking to Ballock about how the incident was going to be reviewed with a prosecutor, she was on her cell phone with someone she identified as her therapist. Ice said he did not want a FPO. Ice was told he could leave. Ballock decided that she wanted to follow us to our office



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to obtain a protective order against Ice. Ballock followed us to the office and completed the FPO paperwork.

I understand an FPO was granted to Ballock and the FPO was faxed to Marion County, where Ice lives. On 08/19/13 I heard Deputies serving a FPO at 51 Summit Overlook Drive. It is my understanding that Ice had gotten an FPO against Ballock.

On 08/20/13 I spoke to Snider who told me he had reviewed the case with APA Scott. Snider said Scott felt there was insufficient evidence to identify the primary aggressor and charge anyone at this time. Scott said to close the case for now, pending further evidence.

**Dispatch Record**

\*\*\*\*\*ADDED 08/12/2013 05:01:03\*\*\*\*\*

[RespondingUnits]

Unit  
105 L01 2013-08-12T02:46:49 2013-08-12T02:46:49 2013-08-12T03:08:03 2013-08-12T04:59:47  
139 L01 2013-08-12T02:42:44 2013-08-12T02:50:51 2013-08-12T03:08:06 2013-08-12T04:59:33

Case\_Number : 201386954  
Case\_Type : 0  
CAD\_Call\_Number : 201386954

[Incident]

Case\_Number : 201386954  
Incident\_Number : 201386954  
Supplement : 1  
Date\_Report : 2013-08-12T02:42:01  
Date\_Incident : 2013-08-12T02:42:01  
Case\_Status : S  
Case\_Disposition : S  
EventCode : 91OPLI  
CallerName : BALLOCK, ELLEN  
Street\_Name : SUMMIT OVERLOOK  
Address : 51 SUMMIT OVERLOOK DR  
City : MORGANTOWN

Narrative

1 OPEN LINE/HEAR NOTHING ON IT/SAME AS PREVIOUS CALL

STATED THEY ARE STILL AT THE RESIDENCE, CAN HEAR THE FEMALE CRYING IN THE  
BACKGROUND

STATED THEY WERE LOOKING FOR HER PHONE STILL

FEMALE SAID SHE IS AFRAID OF HIM

FEMALE IS SAYING THAT THE MALE WONT GIVE HER THE CELL PHONE

SAID SHE IS TRYING TO FIND HER CELL PHONE

THEY ARE ARGUING IN THE BACKGROUND

SHB117 GOLD CAVILIER

MALE JUST LEFT

SAID HE TOOK DAUGHTERS CELL PHONE

SAID HE IS NOT SUPPOSED TO BE HERE

STATE TROOPER BERRY WAS THERE EARLIER TODAY

MALE IS KENNY ICE